IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5855 of 2004

Date of decision: 08.12.2006

Chanan Singh

..... Petitioner.

Versus

Rajinder Singh and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. M.K. Garg,Advocate
for the respondents.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed by the petitioner-defendants challenging order dated 13.10.2004 whereby a prayer made by the petitioner for amendment of the written statement and to add an objection to the effect that the plaintiff has concealed the factum of judgment and decree dated 27.04.1960 has been declined.

A reading of the order of the trial Court would show that the application was declined on the ground that it had been filed after the trial had already commenced and that the petitioner had nowhere stated in the application as to when he actually came to know regarding the existence of

the judgment and decree dated 27.04.1960. The trial Court therefore found that the applicant- petitioner could have raised this matter even before the commencement of the trial. It is in these circumstances that the application was dismissed.

Learned counsel for the petitioner contends that the decree is relevant to be pleaded as the father of the present plaintiff was a party to the proceedings which culminated in the decree. In fact a mutation No. 14529 was entered in favour of Gajjan Singh allegedly on the strength of this decree. He has thereafter drawn my attention to the statement of Patwari who deposed in this case and stated that the relevant pages of the register relating to the aforesaid mutation were torn out and hence could not be produced. He therefore states that the petitioner was not aware of the factum of the judgment and decree at the time when the trial had commenced. Under these circumstances learned counsel contends that even though there is no specific averment made in the application as to when the petitioner acquired knowledge of the judgment and decree yet it was acquired after the written statement filed. He further contends that the said amendment should be allowed in the interest of justice as the said judgment would be a relevant to enable the court to comprehensively decide the controversy before it. He further contends that if he is allowed to amend the written statement he would only produce the judgment on the record and not lead any further evidence. On the other hand learned counsel for the respondent states that once the petitioner had already taken an objection in para 4 of the written statement regarding mutation No. 14529 it should be presumed that he was aware about the factum of the judgment and decree.

Therefore the amendment of the written statement had been rightly declined by the trial Court.

After hearing learned counsel for the parties I am of the opinion that the present revision petition has merit. Since the father of the present plaintiff was a party to the earlier proceedings and the mutation No. 14529 was entered on the strength of the said judgment and decree, I am of the opinion that the same would be relevant to the controversy in issue before the trial Court. I am therefore of the opinion that the petitioner should be permitted to amend his written statement so as to plead the same. It is further observed that apart from producing the judgment and decree on the record, the petitioner would not lead any further evidence.

The present revision petition is allowed in the aforesaid terms and the order dated 13.10.2004 passed by learned Civil Judge (Junior Division), Moga is set aside.

December 08 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**